

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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Peter DelVecchia, individually and as next  
friend of A.D., a minor,

Case No. 2:19-cv-01322-KJD-DJA

Plaintiffs,

**Order**

v.

Frontier Airlines, Inc., et al.,

Defendants.

Before the Court is Plaintiffs' motion to seal exhibits to their response to Defendant's motion for summary judgment (ECF No. 280) and Defendant's motion for leave to file a response to that motion to seal after the deadline (ECF No. 305). Plaintiffs oppose Defendant's motion for leave to file a response. (ECF No. 306). Defendant did not file a reply. Because the Court finds that Plaintiffs seek to seal entire documents without explaining whether they could reasonably redact the information, the Court denies Plaintiffs' motion without prejudice. Because the Court finds that Defendant did not demonstrate excusable neglect, it denies Defendant's motion for leave to file a response to Plaintiffs' motion to seal.

**I. Discussion.**

**A. *Plaintiffs' motion to seal.***

There is a strong presumption in favor of access to court records which is "based on the need for federal courts, although independent—indeed, particularly because they are independent—to have a measure of accountability and for the public to have confidence in the administration of justice." *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (internal quotation and citation omitted). A party seeking to seal a judicial record more than tangentially related to the merits of the case then bears the burden of "overcoming this strong presumption by meeting the 'compelling reasons' standard." *Kamakana v. City and*

1 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Ctr for Auto Safety*, 809 F.3d at 1099.  
2 “Under this stringent standard, a court may seal records only when it finds a compelling reason  
3 and articulates the factual basis for its ruling, without relying on hypothesis or conjecture.” *Ctr*  
4 *for Auto Safety*, 809 F.3d at 1096-97 (internal citations and quotations omitted).

5 A party seeking to seal documents under this standard must “articulate compelling reasons  
6 supported by specific factual findings that outweigh the general history of access and the public  
7 policies favoring disclosure, such as the public’s interest in understanding the judicial process.”  
8 *Kamakana*, 447 F.3d at 1178-79 (internal quotations and citations omitted). That a party has  
9 designated a document as confidential under a protective order does not, standing alone, establish  
10 sufficient grounds to seal a filed document. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d  
11 1122, 1133, 1138 (9th Cir. 2003); *see also Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470,  
12 476 (9th Cir. 1992). If any confidential information can be easily redacted while leaving  
13 meaningful information available to the public, the Court must order that redacted versions be  
14 filed rather than sealing entire documents. *See Foltz*, 331 F.3d at 1137 (9th Cir. 2003); *see also in*  
15 *re Roman Catholic Archbishop of Portland in Ore.*, 661 F.3d 417, 425 (9th Cir. 2011).

16 Here, the compelling reasons standard applies to the exhibits that Plaintiffs seek to seal  
17 because they are attached to Plaintiffs’ response to Defendant’s motion for summary judgment.  
18 However, neither Plaintiffs nor Defendant have met this standard because the motion seeks to seal  
19 large amounts of information—including entire depositions and expert reports—while providing  
20 only general reasons about why the documents should be sealed and without explaining whether  
21 the documents could reasonably be redacted. Without more, the Court cannot grant Plaintiffs’  
22 motion to seal without relying on hypothesis and conjecture.

23 The Court will thus deny Plaintiffs’ motion to seal. It does so without prejudice because  
24 the documents contain particularly sensitive information like medical data, the names of minor  
25 children, Sensitive Security Information as protected by the Department of Homeland Security  
26 Appropriations Act, and educational record data. The Court will keep the documents under seal  
27 and provide the parties twenty-one days to file either a stipulation or separate motions providing  
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1 additional justifications for sealing the documents and discussion regarding whether the  
2 documents could reasonably be redacted.

3 1. Exhibit 1.

4 Exhibit 1 is Defendant's passenger detail for Plaintiffs. (ECF No. 282). It includes  
5 information like their flight number, departure date, and comments by Defendant's employees'  
6 regarding the incident giving rise to this lawsuit. (*Id.*). Plaintiffs assert that this exhibit has been  
7 marked confidential by Defendant and that it contains Sensitive Security Information ("SSI"), as  
8 identified by Section 525(d) of the Department of Homeland Security Appropriations Act, 2007  
9 Public Law No. 109-295, § 525(d), 120 Stat. 1355, 1382 (October 4, 2006). (ECF No. 280 at 4).  
10 Plaintiffs add that A.D.'s name has been left unredacted "because the full context, including his  
11 full name, is relevant to Plaintiffs' claim for defamation *per se*."<sup>1</sup> (*Id.*).

12 As discussed more fully below, although Defendant moved to respond to support sealing  
13 this exhibit, Defendant did not address excusable neglect to file that response. The Court thus  
14 does not consider Defendant's arguments in its proposed response. However, even if it did,  
15 Defendant's arguments are not sufficient to support sealing this document in its entirety.  
16 Defendant asserts that this document contains "sensitive proprietary information, including  
17 commercial and financial information...certain details of Frontier's internal investigation...[and]  
18 financial information relating to Plaintiffs' airfare." (ECF No. 305-1). But these explanations are  
19 too general to constitute compelling reasons to seal Exhibit 1. And they do not address how and  
20 why the information contained in Exhibit 1 constitutes SSI such that the entire document should  
21 remain sealed.<sup>2</sup> Additionally, no party has explained why A.D.'s name could not simply be  
22 redacted from the document or why his full name is vital to understanding the defamation claim.

23 The Court denies Plaintiffs' motion to seal Exhibit 1 without prejudice. The Court will  
24 keep Exhibit 1 under seal and will require Defendant to file a motion or stipulation to support

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26 <sup>1</sup> A.D.'s name is redacted in certain portions of this document, but not redacted in others.

27 <sup>2</sup> The parties' stipulated order regarding SSI provides that "[w]here possible, only the portions of  
28 the filings that contain Sensitive Security Information shall be filed under seal." (ECF No. 126 at 10).

1 maintaining the document under seal to the extent Defendant asserts that it contains SSI. That  
2 motion or stipulation must explain why the document qualifies as SSI and why that information  
3 must remain under seal. That motion or stipulation must also explain why the document cannot  
4 simply be redacted to remove SSI and references to A.D.'s full name.

5 2. Exhibit 2.

6 Exhibit 2 is the expert report of Captain Vickie R. Norton, BSME, MSc, ATP. (ECF No.  
7 283). Plaintiffs assert that this report extensively discusses subject matter that the Department of  
8 Homeland Security has deemed SSI. (ECF No. 280 at 4-5). Plaintiffs add that Captain Norton  
9 discusses "several documents that Frontier has produced and designated 'Confidential' under the  
10 non-SSI Protective Order (ECF No. 38), which it bears the burden of supporting." (*Id.*).

11 Defendant did not file a declaration or response supporting sealing this document and does  
12 not address it in the motion to file a response to Plaintiffs' motion to seal. And while Plaintiffs  
13 explain that the report addresses "specific details of the Common Strategy Threat Level system  
14 for preventing terrorist acts aboard or using airliners," Plaintiffs do not explain why this SSI  
15 could not reasonably be redacted from the document.

16 The Court denies Plaintiffs' motion to seal Exhibit 2 without prejudice. Exhibit 2 shall  
17 remain under seal. Defendant must file a motion or stipulation to support keeping this document  
18 under seal. That motion or stipulation must explain why the document qualifies as SSI and why  
19 that information must remain under seal. That motion or stipulation must also explain why the  
20 document cannot simply be redacted to remove SSI.

21 3. Exhibit 6.

22 Exhibit 6 is the deposition and expert report of Matthew W. Hughey, M.Ed., Ph.D.,  
23 Plaintiffs' expert witness. (ECF No. 284). Plaintiffs assert that his expert report "extensively  
24 discusses the contents of numerous documents that Frontier has designated 'Confidential'..."  
25 (ECF No. 280 at 5). As discussed more fully below, although Defendant moved to respond to  
26 support sealing this exhibit, Defendant did not address excusable neglect to file that response.  
27 The Court thus does not consider Defendant's arguments in its proposed response. However,  
28 even if it did, Defendant's arguments are not sufficient to support sealing this document in its

1 entirety. Defendant asserts that the report discusses the specific details of passenger  
2 discrimination complaints and human trafficking incident reports that Defendant was ordered to  
3 produce and for which the Court already found compelling reasons to seal. (ECF No. 305-1 at 3).  
4 Defendant adds that many of the deposition questions involve Defendant's "proprietary  
5 information reflected in its training materials and records." (*Id.*).

6 Defendant is correct that the Court already found compelling reasons to seal the  
7 complaints and incident reports themselves because they involved third parties and minors who  
8 may not realize the documents even exist. (ECF No. 150 at 8-9). But Defendant does not assert  
9 that Dr. Hughey discusses these complaints in sufficient enough detail to raise those same  
10 concerns. And even if Dr. Hughey did discuss them in that level of detail, Defendant does not  
11 explain why it could not redact those portions and leave the rest of the deposition and expert  
12 report available to the public.

13 The Court denies Plaintiffs' motion to seal Exhibit 6 without prejudice. Exhibit 6 shall  
14 remain under seal. Defendant must file a motion or stipulation supporting sealing Exhibit 6. That  
15 motion or stipulation must explain exactly how certain training information is "proprietary" and  
16 whether Dr. Hughey discusses passenger complaints and human trafficking incident reports in  
17 sufficient detail to warrant the same concerns as publishing the complaints and reports  
18 themselves. Defendant must also explain whether the deposition and expert report can be  
19 redacted to remove confidential information and, if not, why not.

20 4. Exhibit 10.

21 Exhibit 10 is the deposition transcript of Shawn Christensen, Defendant's 30(b)(6)  
22 witness. (ECF No. 285). Plaintiff asserts that the bulk of this testimony "discusses the specifics  
23 of the Common Strategy Threat Levels, which the DHS has designated as SSI and which the  
24 Court's special protective order on SSI (ECF No. 126) requires to be filed under seal." (ECF No.  
25 280 at 5). Plaintiff adds that the deposition includes testimony and exhibits that Defendant has  
26 designated confidential. (*Id.*). Defendant did not file a declaration or response supporting sealing  
27 this document and does not address it in the motion to file a response to Plaintiff's motion to seal.  
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1 And while Plaintiffs explain that the testimony includes SSI, they do not explain why this SSI  
2 could not reasonably be redacted from the document.

3 The Court denies Plaintiffs' motion to seal Exhibit 10 without prejudice. Exhibit 10 shall  
4 remain under seal. Defendant shall file a motion or stipulation to support keeping this document  
5 under seal. That motion or stipulation must identify the portions of the document that qualify as  
6 SSI, explain why the document qualifies as SSI and why, specifically, that information must  
7 remain under seal. That motion or stipulation must also explain whether the document can be  
8 redacted to remove SSI.

9 5. Exhibit 15.

10 Exhibit 15 is the deposition of Captain Norton. (ECF No. 286). Plaintiffs assert that this  
11 deposition "contains extensive references to SSI, specifically the details of the Threat Levels."  
12 (ECF No. 280 at 5). But Plaintiffs do not explain which portions of the 356-page document  
13 contain these references and why they cannot be redacted. The Court will thus deny Plaintiffs'  
14 motion to seal Exhibit 15 without prejudice. Exhibit 15 shall remain under seal. Plaintiffs must  
15 file a motion or stipulation to support keeping Exhibit 15 under seal. That motion or stipulation  
16 must identify the portions of the document that qualify as SSI, explain why that information  
17 qualifies as SSI, and why, specifically, that information must remain under seal. That motion or  
18 stipulation must also explain why the document cannot simply be redacted to remove SSI.

19 6. Exhibit 16.

20 Exhibit 16 is the deposition of Leah Sampson, MSW, LCSW. (ECF No. 287). Sampson  
21 is A.D.'s therapist. (ECF No. 280 at 5). Plaintiffs point out that Ms. Sampson's deposition  
22 "describes the diagnosis and treatment of A.D." (*Id.*). However, Plaintiffs do not explain  
23 whether the sensitive medical information contained within that deposition could be redacted.  
24 The transcript, which is only two pages, includes information other than medical information, like  
25 Ms. Sampson's qualifications and current position. The Court will thus deny Plaintiffs' motion to  
26 seal Exhibit 16 without prejudice. Plaintiffs must file a motion or stipulation in support of sealing  
27 this exhibit. That motion or stipulation must explain whether the deposition transcript can  
28 reasonably be redacted and if not, why not.

1                   7.     Exhibits 22 and 23.

2             Exhibit 22 is the deposition transcript of Kenneth Carnes, M.D., Peter DelVecchia's  
3     treating neurologist. (ECF No. 288). Exhibit 23 is the deposition of Bruce Lasker, M.D.,  
4     Plaintiffs' expert neurologist. (ECF No. 289). Plaintiffs assert that these depositions describe the  
5     details of Dr. Carnes' diagnosis and treatment of Peter's head injuries and Dr. Lasker's diagnosis  
6     of these injuries, which is medical information traditionally kept confidential. (ECF No. 280 at  
7     6). But Plaintiffs do not explain why all 110 pages of Exhibit 22 and all 83 pages of Exhibit 23  
8     must remain under seal or if they could reasonably redact the medical information from the  
9     transcripts. The Court will thus deny Plaintiffs' motion to seal Exhibits 22 and 23 without  
10    prejudice. Plaintiffs must file a motion or stipulation in support of sealing these exhibits. That  
11    motion or stipulation must explain whether the deposition transcripts can reasonably be redacted  
12    and if not, why not.

13                   8.     Exhibits 24 and 25.

14            Exhibit 24 is the deposition and expert report of Lindsey Ohler, Psy.D., one of Plaintiffs'  
15    expert psychologists. (ECF No. 290). Exhibit 25 is the deposition and expert report of Gustavo  
16    Halley, Psy.D., another of Plaintiffs' expert psychologists. (ECF No. 291). Plaintiffs assert that  
17    Dr. Ohler and Dr. Halley's reports describe the details of their testing and diagnosis of A.D.'s  
18    emotional injuries, which is confidential medical information. (ECF No. 280 at 6). Plaintiffs do  
19    not address either doctor's deposition. Plaintiffs also do not explain why all 171 pages of Exhibit  
20    24 and all 192 pages of Exhibit 25 must remain under seal and why they could not reasonably  
21    redact the medical information therein. The Court will thus deny Plaintiffs' motion to seal  
22    Exhibits 24 and 25 without prejudice. Plaintiffs must file a motion or stipulation in support of  
23    sealing these exhibits. That motion or stipulation must explain whether the deposition transcript  
24    can reasonably be redacted and, if not, why not.

25                   9.     Exhibits 26 and 27.

26            Exhibit 26 is the deposition transcript of Lori Merritt, A.D.'s teacher. (ECF No 292).  
27    Exhibit 27 is the deposition of Leslie Bryant, A.D.'s school principal. (ECF No. 293). Plaintiffs  
28    assert that both depositions describe A.D.'s confidential school record, testing data, and his

1 medical information, “all of which is traditionally confidential information...” (ECF No. 280 at  
 2 7). However, Plaintiffs do not explain why all 91 pages of Exhibit 26 and all 68 pages of Exhibit  
 3 27 must remain under seal and why they could not reasonably redact the medical and school  
 4 record information therein. Plaintiffs also do not differentiate which portions of those depositions  
 5 contain school record information and which contain medical information. The Court will thus  
 6 deny Plaintiffs’ motion to seal Exhibits 26 and 27 without prejudice. Plaintiffs must file a motion  
 7 or stipulation in support of sealing these exhibits. That motion or stipulation must explain  
 8 whether the deposition transcript can reasonably be redacted and, if not, why not.

9 10. Exhibits 28 and 29.

10 Exhibit 28 is the deposition transcript of Lawrence Carvalho, one of the ground handling  
 11 agents working on Defendant’s behalf. (ECF No. 294). Exhibit 29 is the deposition of Angelica  
 12 Paulo, also a ground handling agent working on Defendant’s behalf. (ECF No. 295). Plaintiffs  
 13 assert that Mr. Carvalho and Ms. Paulo’s depositions name A.D. and have been left unredacted  
 14 “because the full context, including A.D.’s name, is relevant to Plaintiffs’ claim for defamation  
 15 *per se*.” (ECF No. 280 at 7). However, Plaintiffs do not explain why all 97 pages of Exhibit 28  
 16 and all 132 pages of Exhibit 29 must remain under seal and why A.D.’s full name being  
 17 unredacted is vital to their defamation claim. The Court will thus deny Plaintiffs’ motion to seal  
 18 Exhibits 28 and 29 without prejudice. Plaintiffs must file a motion or stipulation in support of  
 19 sealing these exhibits. That motion or stipulation must explain whether the deposition transcript  
 20 can reasonably be redacted and, if not, why not.

21 ***B. Defendant’s motion to file a response.***

22 Under Federal Rule of Civil Procedure 6(b)(1)(B), “[w]hen an act may or must be done  
 23 within a specified time, the court may, for good cause, extend the time...on motion made after the  
 24 time has expired if the party failed to act because of excusable neglect.” Under Local Rule IA 6-  
 25 1(a), a request to extend time “made after the expiration of the specified period will not be  
 26 granted unless the movant or attorney demonstrates that the failure to file the motion before the  
 27 deadline expired was the result of excusable neglect.” Defendant’s motion acknowledges that the  
 28 deadline to respond to Plaintiff’s motion to seal passed and that the deadline to file a declaration



1 in support of sealing the documents under the Court's protective order also passed. (ECF No. 305  
2 at 2). However, Defendant does not address excusable neglect. Plaintiffs point this out in  
3 response. (ECF No. 306). Defendant did not file a reply. Because Defendant did not address the  
4 excusable neglect standard, the Court denies Defendant's motion to file its response after the  
5 deadline.

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7 **IT IS THEREFORE ORDERED** that Plaintiffs' motion to seal (ECF No. 280) is **denied**  
8 **without prejudice**. Plaintiffs and Defendant must file a stipulation or separate motions to seal  
9 the exhibits at issue addressing the items the Court has outlined above on or before **January 30,**  
10 **2024.**

11 **IT IS FURTHER ORDERED** that Defendant's motion for leave to file its response  
12 (ECF No. 305) is **denied.**

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14 DATED: January 9, 2024

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18 DANIEL J. ALBREGTS  
19 UNITED STATES MAGISTRATE JUDGE  
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